Background

• November 2018 – Proposed Title IX regulations published
• 124,000+ comments submitted by the public through February 2019
• U.S. Department of Education reviewed comments and revised regulations over the course of 15 months
Final Regulations

- New regulations published May 19, 2020
- Effective date: August 14, 2020
- Intention by the Department of Education is to begin enforcement on that date
- Applies to all student and employee (faculty and staff) cases meeting the definition of sexual harassment under the new regulations
Areas of Significant Impact

- Definition of covered conduct
- Jurisdiction
- Response obligation of university
- Formal complaints
- Live hearings
- Implications for current processes addressing other forms of harassment/discrimination
Definition of Prohibited Conduct

• Sexual harassment
  – Quid pro quo (by employees only)
  – Hostile environment
    • Unwelcome conduct determined by a reasonable person to be so severe, pervasive, AND objectively offensive that it effectively denies a person equal access
  – Sexual assault, stalking, dating and domestic violence
Response Obligations – Other Forms of Harassment

- Supportive measures
- Informal resolution (Section 6.2)
- Formal resolution process (Section 6.3)
  - Complaint filed
  - Investigation
  - Investigation report provided to decision-maker
  - Sanctions and appeals available
Response Obligations – Sexual Harassment

• Supportive measures
• Filing of a formal complaint
  – Mandatory dismissal of complaint
  – Optional dismissal of complaint
  – Informal resolution
  – Formal grievance process
Jurisdiction – Sexual Harassment

- Sexual harassment
- Occurs in an education program or activity controlled by the University
- Within the United States
- University controls the respondent (i.e. respondent is either enrolled or employed by the Univ.)
- Complainant is participating in or attempting to participate in the education program or activity of the University (if not, no Univ. jurisdiction)
Formal Grievance Process

- Formal complaint filed
- Investigation conducted by two trained investigators
- Investigation report completed and shared with parties and their advisors
  - Role of advisor
- Pre-hearing meeting
- Hearing
  - Outcome and sanctions
- Appeal
Hearing Details

- Trial-like process
- Cross-examination/examination of parties and witnesses
- Rulings on evidence – relevancy, admissibility
- Credibility determinations
- Knowledgeable on nuances of sexual harassment
- Detailed written decision (with sanctions)
Decision-maker and Appeal Panels

- Three-person panels, with one individual designated as the Chair
- Comprised of combination of three trained faculty and staff members